

Remarks

Reconsideration is requested. Claims 28-35 are presented.

Applicant's arguments presented below focus on certain patentable differences between the invention as claimed and the applied references. However, it is not to be inferred that the failure to argue all differences between the claimed subject matter and the applied references constitutes acceptance of assertions made in the Office Action of alleged similarities between elements of the claimed subject matter and the applied references.

Rejections under 35 U.S.C. 103:

Claims 28-34 are rejected under 35 U.S.C. 103 as being unpatentable over Kowaguchi (U.S. Patent No. 6,201,973) in view of Tomoike (U.S. Patent No. 6,233,447). This rejection is respectfully traversed.

Re: claim 28**Motivation teaches away from the purposed combination of teachings**

In the Office Action the motivation for combining the teachings of Kowaguchi's communication device with Tomoike's device was stated to be "to achieve better traffic management as taught by Tomoike". Such a motivation does not exist for one of ordinary skill in the art. Further, one of ordinary skill in the art would be motivated NOT TO COMBINE the high traffic area information of Tomoike into the device of Kowaguchi as explained below.

The objective of Tomoike is to:

"provide a mobile communication system which can restrict incoming calls to an exchange in a state of congestion and can omit wasteful processing for connecting to a restricting exchange."

Col. 2, lines 31-36.

That is, during a time of high traffic congestion at a mobile exchange, wasteful processing of an incoming call to a mobile served by the mobile exchange is eliminated. Such an incoming call request is aborted prior to reaching the mobile exchange of the destination mobile, and hence there is no signal or communication transmitted from the mobile exchange to the destination mobile during the time that high traffic congestion exists.

As shown in the signal flow diagram in FIG. 2 of Tomoike, when mobile communication exchange 3 is experiencing a high traffic condition, an incoming request to establish a call with mobile station 4 (served by mobile communication exchange 3) is aborted prior to the call request reaching mobile communication exchange 3; see step 28. Therefore, one of ordinary skill in the art would be motivated by Tomoike to abort new incoming call requests prior to the request reaching the mobile exchange thereby eliminating the need for any additional signaling from the mobile exchange to the destination mobile during times of high traffic congestion. Requiring the mobile exchange to transmit a further signal to the mobile during high traffic congestion is contrary to the objective and teachings of Tomoike.

In claim 28 a first signal is transmitted from the exchange and received at the mobile device while the mobile device is within a geographical area designated as a high traffic area. One of ordinary skill the art would understand that Tomoike teaches away from this requirement as explained above. Therefore, one of ordinary skill the art would be motivated not to make the combination proposed in the Office Action, since such a proposed combination would go directly against the purpose and teachings of Tomoike. Because one of ordinary skill in the art would be motivated NOT to combine the teaching of Tomoike with Kowaguchi, the rejection of claim 28 is not supported by the applied references and should be withdrawn.

Prior art teaches away

It is well-settled that teachings of a reference that teaches away from a limitation of the claimed invention must be considered as well as teachings of the reference that could point towards the invention.

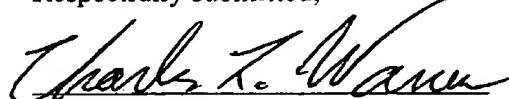
...an applicant may rebut a prima facie case of obviousness by showing that the prior art teaches away from the claimed invention in any material respect. *In re Geisler*, 116 F.3d at 1469, 43 USPQ2d at 1365 (quoting *In re Malagari*, 499 F.2d at 1303, 182 USPQ at 553). *In re Peterson*, 315 F.3d 1325, 65 USPQ2d 1379 (CA FC 2003)

For the same reasons explained above it is clear that Tomoike teaches away from the claimed invention in a material respect. Tomoike teaches that a mobile exchange should be spared from additional loading during a time of high traffic congestion thereby preventing any further signaling between the mobile exchange and a supported mobile. Therefore, in accordance with *In re Geisler*, a prima facie case of obviousness has been rebutted since Tomoike teaches away from the claimed invention in a material respect, and the rejection of claim 28 should be withdrawn.

Claim 30 is believed to be allowable for reasons explained above with regard to claim 28.

If a telephone conference would be of assistance in advancing the prosecution of this application, the Examiner is invited to call applicants' attorney at 630-584-9206.

Respectfully submitted,


Charles L. Warren
Attorney for Applicant
Reg. No. 27,407

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CARMEN B. PATTI & ASSOCIATES, LLC
Customer Number 32205